

**AMENDMENT OFFERED BY** MR. OXLEY**TO THE AMENDMENT OFFERED BY MR. MARKEY****OF MASSACHUSETTS** *(TO TAZZIN SUBSTITUTE)***[Oxley/Manton: decryption requirements and liability]**MARKEY

Page **[3]** of the amendment, strike line **[4]** and all that follows through page **[9]**, line **[10]**, and insert the following:

1 As used in this chapter:—

2 “(A) the term ‘communications’ includes wire  
3 communications and electronic communications;

4 “(B) the term ‘electronic information’ means  
5 any signs, signals, writing, images, sounds, data, or  
6 intelligence of any nature stored in whole or in part  
7 by a wire, radio, electromagnetic, photo-electronic, or  
8 photo-optical system;

9 “(C) the term ‘plaintext’ means, with respect to  
10 communications or electronic information, the form  
11 of the communications or information before it has  
12 been encrypted or, if encrypted, the form after it has  
13 been electronically retransformed into its original  
14 form; and

15 “(D) the term ‘encryption product’ means any  
16 product, software, or technology that can be used to  
17 encrypt and decrypt communications or electronic

1 information and any product, software, or tech-  
2 nology with encryption capabilities.

3 **“§ 2802. Domestic use of encryption products**

4 “(a) FREEDOM TO USE ENCRYPTION.—Subject to  
5 subsection (b) and section 2806, it shall be lawful for any  
6 person to manufacture or sell in interstate commerce in  
7 the United States, or to import into the United States,  
8 any encryption product, regardless of the encryption algo-  
9 rithm selected, encryption key length chosen, or medium  
10 used.

11 “(b) DECRYPTION CAPABILITY REQUIREMENTS.—

12 “(1) IN GENERAL.—Except as provided in para-  
13 graph (2), any encryption product manufactured or  
14 sold in interstate commerce, or knowingly imported  
15 into the United States, shall include features that  
16 permit immediate access (pursuant to appropriate  
17 judicial process) to the plaintext of communications  
18 or electronic information encrypted using such prod-  
19 uct without the knowledge or cooperation of the per-  
20 son using such product.

21 “(2) EXCEPTIONS.—The requirement under  
22 paragraph (1) shall not apply to an encryption prod-  
23 uct to the extent that—

24 “(A) the encryption product is used by a  
25 corporation, organization, or other legal entity

1           that maintains policies that ensure law enforce-  
2           ment agencies have immediate access to the  
3           plaintext of communications or electronic infor-  
4           mation encrypted using such product without  
5           the knowledge or cooperation of a person using  
6           a service provided by the corporation, organiza-  
7           tion, or other legal entity that utilizes such  
8           product;

9           “(B) the manufacturer of the encryption  
10          product formally agrees in advance to provide  
11          to the appropriate and duly authorized Federal,  
12          State, and local law enforcement agencies the  
13          technical information and assistance that en-  
14          sure law enforcement agencies have immediate  
15          access to the plaintext of any communications  
16          or electronic information encrypted using such  
17          product without the knowledge or cooperation  
18          of the person using the product; or

19          “(C) the encryption product was manufac-  
20          tured before January 1, 2000.

21          “(c) IMPLEMENTATION.—

22          “(1) CONTENT.—The Attorney General, in con-  
23          sultation with the Secretary of Commerce, shall  
24          carry out a rulemaking proceeding to implement

1 subsection (b). The regulations issued under such  
2 rulemaking—

3 “(A) shall provide that ensuring access, by  
4 a third party, to the plaintext of communica-  
5 tions or electronic information encrypted using  
6 an encryption product (including by placing any  
7 key for the encryption product in escrow with  
8 any third party or any other sharing of private  
9 encryption keys) shall be sufficient to comply  
10 with the requirement under subsection (b)(1);

11 “(B) shall provide that no officer of the  
12 Federal Government or any State may require  
13 any particular decryption methodology (includ-  
14 ing a methodology described in subparagraph  
15 (A)) in order to comply with the requirements  
16 of subsection (b)(1);

17 “(C) may not have the effect of rendering  
18 inoperable, for its intended purposes, any  
19 encryption product manufactured before Janu-  
20 ary 1, 2000; and

21 “(D) shall provide that no officer of the  
22 Federal Government or any State may disclose  
23 to any person, other than to a law enforcement  
24 authority, any information considered to be

1           company proprietary or confidential by the  
2           manufacturer of the encryption product.

3           “(2) TIMING AND PROCEDURE.—The rule-  
4           making proceeding under paragraph (1)—

5                   “(A) shall be initiated within 90 days after  
6           the date of the enactment of the Security and  
7           Freedom Through Encryption (SAFE) Act;

8                   “(B) shall be completed within 1 year after  
9           such date of enactment; and

10                   “(C) shall be conducted in accordance with  
11           section 553 of title 5, United States Code and  
12           shall be subject to judicial review under chapter  
13           7 of such title.

14           “(3) EFFECTIVE DATE.—The regulations issued  
15           under this subsection shall take effect on January 1,  
16           2000.

17           “(d) CRIMINAL PENALTY.—

18                   “(1) IN GENERAL.—Any person within the  
19           United States who knowingly manufactures, alters,  
20           sells in the United States, or knowingly imports into  
21           the United States any encryption product that does  
22           not comply with the requirements under subsection  
23           (b) shall be imprisoned for not more than 5 years,  
24           or fined in the amount set forth in this title, or both.

1           “(2) PROTECTION OF MANUFACTURERS.—A  
2       person who manufactures an encryption product  
3       shall not be considered to have committed a violation  
4       under paragraph (1) if the encryption product fails  
5       to comply with requirements under subsection (b)  
6       (or the regulations issued under subsection (c) to  
7       implement such requirements) because the product  
8       was altered subsequent to manufacture by a person  
9       not under the control of the manufacturer.

10   **“§ 2803. Liability limitations**

11       “No person shall be subject to civil or criminal liabil-  
12   ity for providing access to the plaintext of encrypted com-  
13   munications or electronic information to any law enforce-  
14   ment official or authorized government entity, pursuant  
15   to judicial process.

16   **“§ 2804. Studies**

17       “(a) ASSESSMENT OF KEY MANAGEMENT INFRA-  
18   STRUCTURE.—Within 6 months after the date of the en-  
19   actment of the Security and Freedom Through Encryption  
20   (SAFE) Act, the Secretary of Commerce, in consultation  
21   with the Attorney General, shall conduct a study, and pre-  
22   pare and submit to the Congress and the President a re-  
23   port regarding such study, that—

24           “(1) assesses the need for the development of a  
25       domestic and global key management infrastructure;

1           “(2) assesses how a key management infra-  
2           structure would facilitate electronic commerce; and  
3           “(3) provides legislative recommendations nec-  
4           essary to implement a key management infrastruc-  
5           ture.

6           ~~“(b) ANALYSIS OF ACCESS TO ENCRYPTED INFORMA-~~  
7           ~~TION.—Within 6 months after the date of~~

          Page [7] of the amendment, strike lines [7] through  
          [13] and insert the following:

8           ~~“§ 2805. Privacy protection~~

Page 9 of the amendment,  
strike line 10 and insert:

“ § 2804. Privacy Protection ”